

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

BENEDICT O. ATAKPU,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 05-1198-CV-W-DW
	)	
THE SCHOOL DISTRICT OF	)	
KANSAS CITY, MISSOURI,	)	
	)	
Defendant.	)	

**ORDER**

Before the Court is Benedict O. Atakpu's Motion for Relief from Judgment and Order (Doc. 29). Defendant filed Suggestions in Opposition (Doc. 33) and Plaintiff filed Reply Suggestions (Doc. 34). For the following reasons, the motion is denied.

In its August 28, 2006 Order, the Court dismissed this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As explained in that Order, Plaintiff failed to file this action within ninety days of receiving the right-to-sue letter from the EEOC on August 25, 2005. Plaintiff now seeks relief from that Order, alleging that on October 6, 2005 he filed a motion for court-appointed counsel prior to the aforementioned filing deadline and that the Clerk of the Court failed to properly enter the motion as filed. In support of this contention, Plaintiff relies on the November 17, 2005 letter from the Clerk's Office indicating receipt of Plaintiff's motion. The letter states that a new lawsuit could not be filed because additional information and the filing fee were required. The letter further states that multiple unsuccessful attempts to contact Plaintiff via telephone were made. Finally, the letter explained the steps Plaintiff needed to take to properly file a case in this Court. Plaintiff then filed his Motion for Leave to Proceed *in forma pauperis* on November 29, 2005.

It is Plaintiff's responsibility to properly file an action with the Court. The November 17, 2006 letter does not establish that Plaintiff's failure to timely file this lawsuit was due to an error or omission on the part of the Clerk of the Court. On the contrary, it clearly indicates that Plaintiff simply failed to properly file this action on October 6, 2006. Although the Clerk attempted to assist Plaintiff, this in no way shifts the responsibility for properly filing a lawsuit in this Court away from Plaintiff. As such, the Court finds no basis for tolling the relevant deadline to file suit or otherwise granting Plaintiff relief from judgment.

As this action is not properly before the Court, the remaining arguments raised in Plaintiff's motion need not be addressed.

The Court hereby ORDERS

- 1) Plaintiff's motion for relief from judgment and order (Doc. 29) is DENIED; and
- 2) the Clerk of the Court to delivery a copy of this Order via regular mail and certified mail, return receipt requested, to:

Benedict Atakpu  
207 National Drive  
Murfreesboro, TN 37128

Date: October 18, 2006

/s/ DEAN WHIPPLE  
Dean Whipple  
United States District Court